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BOARD OF PUBLIC UTILITIES

Regulations of Cable Television
Bills for service; form of bill
Proposed Amendment: N.J.A.C. 14:18-3.7
Due date of payment and notice of discontinuance
Proposed Amendment: N.J.A.C. 14:18-3.9

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with approval of the Board of Public Utilities, Jeanne M. Fox, President; Frederick F. Butler, Commissioner; Connie O. Hughes, Commissioner; and Jack Alter, Commissioner)

Authority: N.J.S.A. 48:5A-10

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: CX04111464

Proposal Number: PRN 2005-117

A public hearing concerning the proposal will be held on Friday, April 29, 2005 at 10:30 A.M. at:

Board of Public Utilities
Hearing Room, 8th Floor
Two Gateway Center
Newark, NJ 07102

Submit written comments by June 3, 2005 to:

Celeste M. Fasone, Director
Office of Cable Television
Two Gateway Center
Newark, NJ 07102

The agency proposal follows:

Summary

The Board of Public Utilities (Board) proposes to amend two sections of N.J.A.C. 14:18 with this rulemaking. The first is pursuant to its readoption of N.J.A.C. 14:18, Regulations of Cable Television, published on November 17, 2003 at 35 N.J.R. 5294. The New Jersey Cable Telecommunications Association (NJCTA) submitted comments on the proposal requesting that the Board amend N.J.A.C. 14:18-3.7 upon adoption. The adopted rule requires that a cable television operator identify the components of each service package and provide the rate for each component. The Board concluded that if a cable television operator had difficulty in

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breaking out each component and its corresponding rate, the cable television operator could provide the individual rates for each component and then provide a percentage or amount of discount offered by taking the service package and be in compliance with this rule. The Board further concluded that a cable television operator has a customer service obligation to provide its customers with sufficient information where multiple rate schedules are in effect in order for the customer to select the rate schedule that best meets the customer's individual needs. However, in formal comments, the NJCTA stated that many cable television operators do not have billing systems that would allow this type of billing detail. The NJCTA asked that the Board amend the rule to allow, instead of notice on the individual bill, cable television operators to provide a bi-monthly notice by way of bill insert on the packages provided.

While the Board believes that the NJCTA's proposed suggestions would give the customer the proper amount of information needed to make decisions about the programming subscribed to, the Board believes that the proposed changes were substantive. Therefore, the Board adopted the rule as proposed, but noted that it would propose, at a later date, an amendment to the rule that would allow cable companies the option to annually elect to provide the service package component pricing information in a bi-monthly bill. Subsequently, the Board issued an order in Docket No. CO03100796, on October 22, 2003, granting a waiver of the provisions of N.J.A.C. 14:18-3.7(a)3 and allowing for an alternative method of billing detail. Specifically, the Board authorized cable television operators to provide bi-monthly notice by way of bill insert or separate mailer to customers. The waiver order requires that the bi-monthly notice must contain all of the information required by N.J.A.C. 14:18-3.7(a)3; that is, it must provide identification of each component for each service package subscribed to by the customer and the rate for each component.

Also, pursuant to comments raised by the NJCTA, the Board believes that notice on the back of a customer's bill will also suffice to meet the requirements of this provision. However, the Board proposes to require that the notice be in clear and conspicuous language.

The Board order implemented the provisions of N.J.A.C. 14:18-3.7(a)3 and the waiver provisions as of February 1, 2004 and required that each cable television company elect which method it shall use to notify its customers from that date for the remainder of calendar year 2004. In addition, the cable television operator is required by the Board order to thereafter elect by no later than November 15th the method of providing notice to customers for the following calendar year. If a cable television operator does not elect the method of billing notice by the time prescribed, it must provide notice by way of billing detail on the customer's bill for the subsequent year, as required under N.J.A.C. 14:18-3.7(a)(3).

Therefore, the Board is herein proposing amendments to N.J.A.C. 14:18-3.7 in order to promulgate the waiver provisions of the Board order issued in Docket No. CX02040265 on October 22, 2003.

The second amendment proposed herein is pursuant to P.L. 2004, c.106, which was enacted on July 14, 2004, became effective on November 11, 2004 and amends the New Jersey State Cable Television Act, N.J.S.A. 48:5A-1 et seq., and would require all cable television companies that provide cable television reception service to permit residential customers to designate a third party to receive any notice of termination of service. The purpose of the legislation is to ensure that cable television subscribers would be afforded the

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same consumer protection in their cable television service as that provided in P.L. 2000, c. 148, which allows all residential ratepayers to designate a third party to receive a disconnection notice for their electric, gas, water, wastewater and local telecommunications service

Pursuant to statute, the rule will require that a customer notify the cable television company that a third party has been designated to receive the disconnection notice in addition to receiving it themselves. The notification to the cable television operator must be authorized on an appropriate form for recording this designation, and the cable television operator must make the request for the designation effective no later than 10 business days from the date of receiving it. A customer is required to send the notification in writing and the notification must contain an acceptance by the third party designee to receive copies of any notices of termination of service of the customer's cable television reception service.

As noted above, transmission to the third party designee of a copy of the termination of service notice shall be in addition to the original document transmitted to the customer. The copy of the termination of service notice transmitted to the third party shall be governed by the same law and policy provisions which govern the notice being transmitted to the customer. The notice of disconnection is governed under the current rule at N.J.A.C. 14:18-3.9. Designation as a third party shall not constitute acceptance of any liability on the part of the third party for payment of the cable television bill.

The cable television company shall notify every residential customer within 60 days of the adoption of this rule and then annually in writing of the availability of the third party designee notice procedures and provide information on how the customer can commence this procedure, except that notice need not be provided once a customer has made a designation. A cable television company may provide this required annual notice to its residential customers in any manner that the cable television company determines is appropriate including as part of its other required annual notices to customers.

A 60-day comment period is provided on this notice of proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and N.J.A.C. 1:30-3.2 governing rulemaking calendars.

Social Impact

The proposed amendment to N.J.A.C. 14:18-3.7 requires cable television operators an option to provide bi-monthly notice to customers of the services subscribed to by the individual customer. The rule as currently written requires the breakdown of components monthly on the customer's bill. This will allow customers to understand the programming services subscribed to as well as alternatives that may exist. The Board does not believe that bi-monthly notice rather than the currently prescribed monthly notice will negatively impact customers as they will still be able to see a detailed description of the services they subscribe to on a regular basis.

The proposed amendment to N.J.A.C. 14:18-3.9 requires that all cable television companies that provide cable television reception service permit residential customers to designate a third party to receive any notice of termination of service. The societal benefit of

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this proposal is that customers will be able to have the additional protection of a third party to receive notices in case service is to be terminated. This will benefit customers who may not understand their cable television bills and may assist cable television operators in that a third party is notified of the pending disconnection so that arrangements for payment can be made, customers can be retained and disconnections may be avoided.

Economic Impact

The proposed amendment to N.J.A.C. 14:18-3.7 may, to some extent, save operating costs compared to the requirements of the current rule as written. The proposed amendment to N.J.A.C. 14:18-3.9 should not impose any direct or specific costs. However, all reasonable levels of expenses incurred by cable television operators in complying with this collection and reporting requirement will be considered to be a business expense, recoverable through rate proceedings and cost of service regulations. In both instances, it is believed that the costs that will be incurred will be those of an administrative nature for design or redesign of annual notices, bills and/or bill inserts.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. The amendments to N.J.A.C. 14:18-3.7 and -3.9 are not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporate or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis for this proposal.

Jobs Impact

It is not anticipated that the proposed amendments will result in the creation of new jobs or the loss of existing jobs. The proposed amendments will not have an impact on any other sector of the economy of the State of New Jersey.

Agriculture Industry Impact

The proposed amendments have no impact on the agriculture industry.

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Regulatory Flexibility Statement

There are no small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. to which the proposed amendments would apply. The businesses affected have more than 100 full-time employees and/or are based out of state.

Smart Growth Impact

The Board is of the opinion that the proposed amendments will have no impact on either the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed amendments follows (additions indicated in boldface thus):

14:18-3.7 Bills for service; form of bill

(a) - (e) (No change)

(f) In lieu of the requirements of (a)3 above, a cable television company may provide to each customer the information required in (a)3 above at least every other month and no less than six times a year, as a bill insert, bill stuffer or separate mailer. Such notice shall be provided in clear and conspicuous language.

(g) The provisions of (a)3 and (f) shall go into effect in the method outlined below.

1. Each cable television company shall declare in writing its intention to the Office, no later than November 15, of the method to be used to provide notice: by way of notice on the bill, as outlined in (a)3 above, or by way of a bi-monthly bill insert or separate mailer, as outlined in (f) above for the following year. The cable television company shall provide notice to customers in this manner beginning with the billing cycle starting on January 1 for the remainder of the calendar year.

2. If the Office fails to receive written notice of a cable television company's intention by the dates specified in (g)1 above, the requirements of (a)3 above shall be imposed on that cable operator for the following calendar year.

14:18-3.9 Due date of payment and notice of discontinuance

(a) - (g) (No change.)

(h) By (sixty days from the effective date of this amendment), and annually thereafter, each cable television company shall notify all residential customers that, upon written request, notice of disconnection of service will be sent to a designated third party as well as to the customer. Once a customer has made a third party designation, notification of this provision

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need no longer be provided to that customer. After the initial notice, notice of this provision may be provided as part of the annual notices required by N.J.A.C. 14:18-3.18.

1. A customer requesting such a third party designation must send a written notification to his or her cable television operator on a form which may be designated by the cable television operator. The notification shall contain the written acceptance of the person to act as a third party to receive the notification(s) on behalf of the customer.

2. Notice of third party designation shall be effective no later than 10 business days following the date of receipt by the cable television operator.

3. A cable television operator shall notify the third party designee of disconnection of the customer in the same method that it notifies the subscriber, in accordance with the provisions of (b) through (d) above, where notice of third party designation has been received and is effective.

4. Designation of a third party shall not constitute liability on the part of the third party for payment of the cable television bill and the cable television operator shall not demand payment from the third party.